IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-556

HAROLD BLOCH, BERNARD BLOCH, JOAN BLOCH, ROSALYN BLOCH and NARUTH CORP.,

Petitioners,

vs.

ETHYLE BLOCH,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

James H. Grant, Esq.
Attorney for Petitioners
139 Cadillac Square Bldg.
Detroit, Michigan 48226
(313) 963-6969

BERNARD BLOCH, *Petitioner*
326 Lakewood Drive
Bloomfield, Michigan 48013
(313) 645-0117

AMERICAN BRIEF AND RECORD COMPANY, 125 WEALTHY STREET, S. E.
GRAND RAPIDS, MICHIGAN 49503 — TELEPHONE 458-5326

TABLE OF CONTENTS

TABLE OF CONTENTS (CONT'D)

TABLE OF AUTHORITIES

Cases:

Rules:

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. ----------

HAROLD BLOCH, BERNARD BLOCH,
JOAN BLOCH, ROSALYN BLOCH
and NARUTH CORP.,
Petitioners,

vs.

ETHYLE BLOCH,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioners pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Third Circuit entered in this action on July 3, 1978.

OPINION BELOW

The opinion of the Court of Appeals is not yet reported. The petition for rehearing is not yet reported. The memorandum and order of the District Court is not yet reported.

JURISDICTION

The judgment of the Court below was entered on July 3, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

QUESTIONS PRESENTED

The issues involved in this case raise a substantial and procedural Federal question under the Due Process Clause of the 5th and 14th Amendment to the United States Constitution which should be reviewed in order to prevent a travesty of justice and set a dangerous precedent that is repugnant to our constitution.

1. Did the Municipal Judge, sitting as a Federal District Court Judge deprive Petitioners-Defendants of their constitutional right of Due Process by the taking of their property after joining them in a divorce action for alimony without a complaint and summons served upon them and with the intention that they would not be heard and then deed away their property by taking judicial notice of an alleged prior Court decision made by another judge without notice to Petitioners and without giving Petitioners an opportunity to oppose the judicial notice?

2. Is the opinion and order of the Third Circuit Court of Appeals from which this appeal is taken sufficient to provide the Supreme Court a basis upon which to consider the due process question raised in Petitioner's appeal where none of the issues in Petitioner's brief were answered or alluded to and therefore should be remanded to Third Circuit Court of Appeal for a determination?

CONSTITUTIONAL PROVISIONS INVOLVED

The applicable provisions in the United States Constitution are found in 5th and 14th Amendments, which provide, in pertinent part:

> No person shall be deprived of life, liberty or property without due process of law.

FEDERAL RULE OF EVIDENCE INVOLVED

The applicable Rule of Evidence involved is found in Judicial Notice, Rule 201 (e) which provides in pertinent part:

> That a timely request or notice be made in order to give the adversary an opportunity to oppose the taking of Judicial Notice.

STATEMENT OF THE CASE

In a divorce action between Ethyle Bloch, Plaintiff vs. Harold Bloch, Defendant, and upon motion of the attorneys for Plaintiff, Bernard Bloch, Rosalyn Bloch and Naruth Corp. along with the Bank of Nova Scotia were made additional parties defendant, it appearing to the court that they were necessary persons and entities whose presence was required to be heard for a just adjudication for alimony-in-gross in the divorce action. (see Defendant-Petitioner's Exhibit O, page 5, Appendix 5) Municipal Judge Antoine Joseph, sitting by special designation as a Federal District Judge did, on August 5, 1976, order that the above-named persons be brought in as added parties defendant and he did further order that said parties be served with a Summons and Complaint, within 5 days. (see Appendix 1)

On November 3, 1976, notice for hearing on any amended motion not pursuant to court order was filed by the attorney for Plaintiff Ethyle Bloch was sent by ordinary mail from the Virgin Islands to the parties defendant in Michigan, for a hearing to be held on November 5, 1976.

The referred-to notice of hearing for November 5, 1976 was unaccompanied by any pleading; nor at that time had any summons and complaint been served upon any added party; nor did the caption on such notice of hearing show defendant-petitioners as parties, nor why they had received such notice and/or whether any relief was being sought against them.

On November 17, 1976, Judge Joseph signed an order permitting that service might be made on Naruth Corp. by mailing a copy of the summons to said defendant at its last known address; and by the publication of the summons in the local newspaper once a week for four consecutive

weeks. However, no summons or complaint was mailed to Naruth Corp.; nor was the service by publication in the local newspaper of St. Croix once a week for four consecutive weeks made as ordered. St. Croix being the Island and territorial division where the property and the trial court is located.

After hearing held on April 22, 1977, it was learned that the attempt at publication was made in the St. Thomas Daily News, a paper published locally on the island of St. Thomas which is a different territorial division.

The insufficiency of service by publication had a long common law history showing misgivings concerning the equity of such constructive service and has often been held that such service was a priori invalid. Beginning with *Pennoyer* v *Neff*, 95 U.S. 714 (1877) and continuing to recent decisions, the largely fictional distinction between in rem and in personam jurisdiction has been eroded. Reference is made to *Mullane* v *Central Hanover Bank & Trust Co*, 339 U.S. 306 (1950) at page 312, and *Schroeder* v *City of New York*, 371 U.S. 209 (1962) at page 212, wherein it was held: "the requirement that parties be notified of proceedings affecting their legally protected interests is obviously a vital corollary to one of the most fundamental requisites of due process — the right to be heard"; also *Walker* v *City of Hutchinson*, 352 U.S. 112 (1956) at page 116 wherein the court said, "it is common knowledge that mere newspaper publication rarely informs a landowner of proceedings against his property" rejecting such notice as appropriate in that case.

In *Mullane, supra*, at page 315 the Supreme Court used strong words in dealing with service by publication, as follows:

> " . . . It would be idle to pretend that publication alone as prescribed here is a reliable means of acquainting interested parties of the fact that their rights are before

> the courts. It is not an accident that the greatest number of cases reaching this court on the question of adequacy of notice have been concerned with actions founded on process constructively served through local newspapers. Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the area of the newspaper's normal circulation, the odds that the information will never reach him are large indeed. In weighing its sufficiency on the basis of equivalence with actual notice, we are unable to regard this as more than feint."

The fruition of this historical trend was stated most succinctly by Justice Marshall in *Shaffer* v. *Heitner*, 97 S. Ct. 2569, (1977), as follows: "the justice that governs a State's power to adjudicate in personam should govern its power to adjudicate personal rights to property located in the state."

The ruling in *Shaffer, supra*, demands that an in personam jurisdiction test is to be applied to the adjudication of personal rights to property located within the state, as in 5 VI.C, Section 112(a)(1) for service by publication, when the action (such as a divorce action) is unrelated to the property.

Dreis v. *Kelly*, C.A. 3d (1962), 304 f2d3, (1962), at page 4, holds that when "the entire object of the suit is to determine the personal rights and obligation of the defendants it is solely a matter in personam . . . " Applied herein, the service upon defendant-petitioner(s) by publication is ineffectual since personal service of the defendant is requisite. Nor can a special appearance such as was made by counsel for the Naruth Corp. at the April 22, 1977 hearing become the basis for jurisdiction, as contended by Plaintiff-Respondent's attorney in his appellate brief at page 4 therein. See *Shaffer, supra*, at page 2583.

At the rehearing before the Third Circuit Court of Appeals, Defendant-Petitioners contended that the attempt at substituted service upon Naruth was totally improper; and as such, that the matter should be remanded to the District Court for the Virgin Islands with an instruction that no further action may be taken regarding the property in question without first obtaining proper service upon Naruth Corporation.

On April 22, 1977 a special appearance only was entered by attorney Sheen on behalf of added defendants Bernard Bloch, Joan Bloch, Rosalyn Bloch and the Naruth Corporation during which he did challenge the court's jurisdiction over said defendants in that no summons and complaint had been served upon any of them, and that the Court lacked jurisdiction due to lack of proper notice. Judge Joseph disregarded all arguments in the premises and ruled that all added parties defendant were duly before the court. Then without request or notice and without giving Defendant-Petitioners an opportunity to be heard and oppose, he took judicial notice of an alleged prior court decision by another judge, in which Naruth Corporation was not a party, that title to Golden Rock property (lot 22 and lot 243A) had been already decided against Defendant-Petitioners. Judge Joseph stated that he thought that Judge Green of the District Court had already made a determination that the title of such newly added parties in the Golden Rock property (lot 22 and Lot 243A) was not theirs, but that of Defendant-Petitioner Harold Bloch, and accordingly not entitled to judicial recognition in the April, 1977 hearing, (see transcript page 10), in the following exchange:

> "Mr. Sheen: 'Your Honor, may I for one moment? In trying to follow the matter procedurally, is it counsel's position or the court's position that there should not be a hearing on the disposition of the property at Golden Rock because there has already been a determination on the matter?"

> "The Court: 'I think Judge Green of the District Court sitting by special designation, determined that the various documents which were executed by Harold Bloch and Ethyle Bloch with respect to the Golden Rock property was a fraud and a sham. They are not entitled to judicial recognition. I think that it is in the record."

Mr. Sheen then withdrew from the case. At this point Defendant-Petitioner Bernard Bloch orally entered his general appearance with the view to avoid a travesty of justice, acting as a stockholder for Naruth and thereby an interested party to challenge the conclusion of the court with respect to the corporation's title to lot 243A. He argued that the representation of attorney Alkon to the Court that the title of the corporation to such lot 243A came by way of a quit claim deed from Harold for $1.00 was untrue, and that such company had obtained such title by purchase from the former titleholder with funds provided by the company. Upon such challenge, Mr. Alkon admitted that his statement to such effect from the former hearing was incorrect. Nevertheless Judge Joseph took judicial notice of the finding made at the prior hearing at which Naruth Corp., was not before the court at that time for any reason.

Municipal Judge Joseph, sitting by special designation, did preclude the offer of any proof to the contrary and he did also preclude any argument to avoid a decision pro tanto by the court based upon such judicial notice, and he did proceed to grant the relief then requested by the attorneys for Ethyle Bloch that Harold Bloch having failed to pay to Ethyle Bloch the sum of $100,000 as alimony in gross, the property known as lots 22 (titled in the names of Bernard Bloch, Joan Bloch and Rosalyn Bloch via purchase at a judicial foreclosure sale) and 243A (titled in the name of the Naruth Corp. by direct purchase of that company from a third party predecessor in title) be deeded over to Plaintiff-Respondent Ethyle Bloch, the same to be effected by action of the Clerk of the Court.

The pleadings filed on behalf of Plaintiff-Respondent Ethyle Bloch for the motion heard in such manner on April 22, 1977 gave no advance notice to any newly-added party defendant of the intent of her counsel to have the court rely, via the taking of judicial notice, of the decision of another judge sitting at a hearing for determination of alimony in a divorce action that the title of persons not parties to such action and not present or otherwise heard at such hearing was not theirs but that of Harold Bloch. Hence such new defendants were surprised at the request made orally by attorney Alkon at the April 22, 1977 hearing that such judicial notice be taken and they were aghast that the Court would deign so to do.

The sine qua non of due process is notice. In *Mullane* v. *Central Hanover Bank & Trust Co, supra,* the supreme court discussed the taking of judicial notice and said that where the proponent requests that judicial notice be taken, the opponent will receive notice by being served with a copy of the request. The constitution requires that a party be informed when the court is noticing facts. In *Garner* v. *Louisiana,* 82 S. Ct. 248, 256, 257 (1961); 7 L Ed 2d 207, 219 the Supreme Court said:

> "Unless the defendant is informed at the trial of the facts of which the court is taking judicial notice, not only does he not know upon what evidence he is being convicted, but, in addition, he is deprived of any opportunity to challenge the deduction drawn from such notice or to dispute notoriety or truth of the fact allegedly relied upon. Moreover, there is no way by which an appellate court may review the facts and law of a case and intelligently decide whether the findings of the lower court are supported by evidence where the evidence is unknown. Such an assumption would be denial of due process."

Although *Garner* was a criminal case, it states well the essence and need for adequate notice in the matter of the

taking of judicial notice. In *Ohio Bell Telephone Co* v. *Public Utilities Commission*, 57 S. Ct. 724 (1937); L Ed 1093 the Supreme Court held that due process also requires disclosure of facts judicially noticed in other proceedings.

The Court of Appeals for the Third Circuit, summarily, and without a written opinion, affirmed the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

A. The Decision Below Whereby The Title Of Petitioners, Bernard Bloch, Joan Bloch, Rosalyn Bloch And The Naruth Corp. Was Taken From Them By An Action Brought Against Them Without Summons And Complaint And Subsequently Heard, Constitutes A Denial Of Due Process Under The Fifth And Fourteenth Amendments Of The United States Constitution.

The operative facts are not in dispute. A Trial Judge sitting by special designation in the Federal District Court in the Virgin Islands took action to determine the question of alimony-in-gross in the divorce action between Ethyle and Harold Bloch. No other person was a party before the court at such time in such action for any purpose. The decision of the court was that the defendant Harold Bloch should pay to the plaintiff Ethyle Bloch alimony-in-gross in the amount of $100,000.00, and failing so to do, that he should convey to her lots 22 and 243A Golden Rock Subdivision. Harold Bloch did not pay the case settlement figure. However, it became evident that the order of the District Court for conveyancing in the alternative could not be implemented for the reason that record title to both such lots were in others.

At the time of the hearing and decision of the District Court on the matter of alimony-in-gross in the divorce action, the record title to lot 22 was in Bernard Bloch, Joan

Bloch and Rosalyn Bloch by virtue of their purchase at a sheriff's sale upon the foreclosure by a second-mortgagee bank of a mortgage on the premises. Although contested by Ethyle Bloch at the time, the marshal's deed and sale to such purchasers was confirmed by the court.

Also at that time, the record title to lot 243A was in the Naruth Corp. by virtue of its purchase of the same from a third party predecessor in title.

Apparently, the attorneys for Ethyle Bloch acted in August, 1976 to call this evident problem in enforcement of the alternative provision to the attention of Municipal Judge Antoine Joseph, then sitting as a Federal District Judge by special designation. Judge Joseph did grant a motion to add these four parties as defendants in the divorce-alimony action and his order provided that a Summons and Amended Complaint be prepared and served upon the added parties within five days. No such complaint was ever prepared or filed and no such complaint and summons therefore was ever personally served upon any such added party.

The record and file in that case shows that attorney Alkon, counsel for Plaintiff-Respondent Ethyle Bloch, had addresses for each added party defendant, yet in November, 1976 said attorney did obtain an order for substituted service upon the Naruth Corp. by publication.

The record and file in that case shows that these added parties were later served with a motion by mail to be heard on April 22, 1977, for the purpose of obtaining an order conveying their respective titles in lots 22 and 243A to Ethyle Bloch, in the alternative, upon the failure of Harold Bloch to pay to her the sum of $100,000.00.

The record and file show that these added parties appeared specially to contest the jurisdiction of the court. Judge Joseph ruled that the Court had jurisdiction over all such parties. Only Bernard Bloch did thereupon appear generally for the purpose of arguing the motion then before

the court. The trial court granted the order for the conveyancing. All such parties have appealed.

Such a file and record almost defies the imagination. It seems fantastic that a trial court would attempt to decide upon a contest over a title to land without having before it a complaint to such effect. Yet that is what the trial court did in 1975 when it purported to rule in a cause for alimony in a divorce action upon the quality of the record title to land of persons not parties to that action.

It would seem that the order of the District Court by Judge Joseph entered in August, 1976 requiring the addition of the affected parties and the trial of their title upon the challenge of Plaintiff-Rspondent Ethyle Bloch via an amended complaint, was a logical step to correct that obvious error, made in 1975. However, after that point in time all logic fails; and further all substantive and procedural due process also failed.

No personal party added defendant was ever personally served with process or complaint; nor was the corporate party so added ever personally served with any process. Summons via a disputed process of publication locally via a non-local newspaper was found to have been made upon the non-resident corporation. Petitioners know of no case wherein a summons alone was used to acquire jurisdiction of a party to a contravery.

In 1975 and at all pertinent times up to April 22, 1977, neither Ethyle nor Harold Bloch were in the chain of title to lot 243A. The former title of Harold Bloch (only) in lot 22 was lost via the judicial foreclosure and sale of his interest in 1972.

These undisputed operative facts demand recognition by the court, yet that recognition has so far been denied. We pray that the Supreme Cuort grant the Writ to avoid this blatant denial of the rights of Petitioners and the taking of their property without due process of law.

B. The Decision Below Whereby The Action Of The Trial Court To Take Judicial Notice Of Certain Alleged Previously Determined Facts Adverse To The Opponents Was Made And Taken Contrary To The Provisions Of The Federal Rule Of Evidence 201, And Contrary To The Guidelines Set Forth In Existing Standards Determined By The Supreme Court.

There was never any previous court hearing in which title to property, lot 22 and lot 243A, was alleged and adjudicated. Yet Judge Joseph rendered a decision as if there was a previous judicial decision on said property.

The file and record in this cause clearly shows that Defendants-Petitioners had no notice prior to the date and time of hearing on April 22, 1977, of the intention of the attorney for Plaintiff-Respondent to request judicial notice that the court relied upon the alleged and fictitious finding made by a prior court adverse to the interest of the Petitioners.

Also, the Petitioners had no notice of the intention of the trial judge to rely upon judicial notice of the alleged findings made by another judge in a prior court decision which was adverse to the Petitioners in which Naruth Corporation was not a party.

Then Judge Joseph, by judicial notice, denied the Petitioners an opportunity to be heard regarding title to their property by stating that lot 22 and lot 243A had already been determined by another court. He then deeded lot 22 and lot 243A to Plaintiff-Respondent.

The standards of the Supreme Court as set forth in *Mullane* v. *Central Hanover Bank & Trust Co.*, *Garner* v. *Louisiana*, and *Ohio Bell Telephone Co.* v. *Public Utilities Commission*, define the requisite notice in implementing Rule 201 of the Federal Rues Of Evidence. It is not just a matter of degree, it is a matter of the virtual absence of any notice whatever.

The decision in the trial court was affirmed without opinion by the Court of Appeals, hence, Petitioners are without any basis to know the mind of the appellate court. The failure to grant the Writ would set a precedent contrary to all existing standards and decisions of the Supreme Court.

C. The Decision Below Whereby The Trial Court Determined It Had Jurisdiction Over The Defendant-Petitioners Without Personal Service Upon Any Of Them Either By Summons Or Complaint And Thereupon Proceeded To Grant An Order Taking Their Property Was A Denial To Petitioners Of Due Process Under The Fifth And Fourteenth Amendments Of The United States Constitution.

The record and file below clearly shows the failure to make personal service upon any added party defendant of a summons or a complaint. The mailing of a motion and a notice of hearing is no proper substitute for the issuance of summons or the filing and service of a complaint.

It is clear that in the absence of any service of a summons, a party is not before the court; and it is also axiomatic that in the absence of the service upon him of a complaint, a party is without notice of the allegations and prayers for relief which may be to his detriment.

The object of the action taken on April 22, 1977 was to act upon the personal rights of the added parties defendant, Petitioners herein, in lots 22 and 243A, Golden Rock Sub. in St. Croix. This is not an action upon any mortgage or other lien or for any levied tax. Accordingly, in personam and not in rem jurisdiction over the parties is required.

The basis for jurisdiction over Defendant-Petitioners Joan Bloch and Rosalyn Bloch is the service by mail of the motion and notice of hearing thereon. Their sole appearance by counsel was special and for the purpose of contesting jurisdiction over themselves. Thus any defects in

service upon them, if any, were preserved, for purposes of any appeal.

The basis for jurisdiction over Defendant-Petitioner Bernard Bloch is the service by mail of the motion and notice of hearing thereon, together with his general appearance entered orally on April 22, 1977 following the denial of the motion made in his behalf to dismiss for lack of proper service upon him. Had there been a proper complaint filed against him he would have had a duty to respond or be in default thereof. Petitioner Bernard Bloch claims that in the absence of any complaint no relief could be had against him in any event, notwithstanding his coerced general appearance made in order to have at least a minimal opportunity to have been heard.

The basis for jurisdiction over Defendant-Petitioner the Naruth Corp. rests upon the substituted service by publication. Such Defendant-Petitioner contends manner of accomplishing such service by publication was defective in that newspaper so used was not published locally but rather was one published on a neighboring island. Such defendant contends that the decision in *Dreis* v. *Kelly, supra*, controls and that no rights of such party in the property known as lot 243A Golden Rock Sub could have been properly decided in the court below.

All Defendant-Petitioners ask that the Supreme Court grant the Writ for the reason that the facts relating to service upon them herein are clearly contrary to the standards set forth in existing cases and that a denial thereof would represent a substantial departure therefrom and would set a dangerous precedent in the application of the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

D. The Decision Below Of The Court Of Appeals For The Third Circuit In Affirming The Court Below On Appeal Covered Several Issues Raising Substantial Questions Yet Was Rendered Without Opinion Thereby Denying The Supreme Court The Benefit Of The Appellate Court's Insight Contrary To The Standard Set In *Taylor* v *McKeithen*, 407 U.S. 191; 32 L Ed 2d 648 (1972), Therefore Requiring A Remand To That Court For Its Detailed Opinion.

The file and record which came to the United States Court of Appeals For the Third Circuit in this matter contained substantial questions relating to the matter of personal service and of the requirement of in personam rather than in rem jurisdiction in order for the District Court below to act with regard to the rights of the parties added as defendants to the original divorce action.

Further, substantial questions relating to the taking of private property without due process of law based upon the action of the District Court below to preclude any contest the findings of fact adverse to their interests in land judicially noticed by the trial court so made in a cause and at a hearing in and at which they were not a party nor present and heard, and which was held at a time in which the interests so later deprived were then existing.

The confusion added by the presence of two lawsuits in the divorce action and two separate foreclosure proceedings, one of which is yet pending in the District Court serves to make the need for a detailed opinion of the Court of Appeals in connection with its decision to affirm all the more necessary

Absent any detailed opinion by the Court of Appeals, the Supreme Court is without the benefit of the insight of that Court in support of its decision. The decision in *Taylor* v. *McKeithen*, 407 U.S. 191, 32 L Ed 2d 648 (1972) set the standard from which the decision of the Court of Appeals without the opinion is a substantial departure in the circumstances requiring remand accompanied by an order to furnish a detailed opinion.

CONCLUSION

The affirmation by the Court of Appeals of the decision of the District Court without opinion has raised substantial constitutional questions of due process and which, should this Writ be denied, would establish substantial departures from existing law. In the same manner, such decision below as affirmed has raised important questions in the application of the standards and rule for the taking of judicial notice of matters decided at a prior hearing or cause and involving parties other than those before the court at the time such judicial notice was taken. The denial of the Writ would establish a precedent which would be a substantial and unwarranted departure from the present law. Defendant-Petitioners may be without relief and thereby deprived of their property without due process of law unless the Supreme Court shall act.

For these reasons a Writ of Certiorari should issue in review of the judgment and opinion of the Court of Appeals and of the decision and order of the District Court of the Virgin Islands.

Respectfully submitted,

James Gardner Colins, Esq.
Attorney for Petitioners
342 Public Ledger Bldg.
Philadelphia, PA 19106
(215) 925-0580

Bernard Bloch, *Petitioner*
326 Lakewood Drive
Bloomfield, Michigan 48013
(313) 645-0117

APPENDIX 1 — Order Of Trial Court To Add Defendant-Petitioners By Serving Them With A Complaint And Summons.

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

ETHYLE BLOCH,
Plaintiff,

v. Civil No. 71/31

HAROLD BLOCH,
Defendant.

ORDER

This cause came on to be heard on motion of plaintiff, Ethyle Bloch, for an order making Bernard Bloch, Joan Bloch, Rosalyn Bloch, Naruth Corp. and the Bank of Nova Scotia additional parties defendant herein, and it appearing to the Court that said Bernard Bloch, Joan Bloch, Rosalyn Bloch, Naruth Corp. and Bank of Nova Scotia are persons or entities whose presence is needed for a just adjudication, as provided by Rule 19 of the Federal Rules of Civil Procedure; that they can be served with process; and that their joinder will not deprive this Court of jurisdiction.

IT IS ORDERED:

1) That Bernard Bloch, Joan Bloch, Rosalyn Bloch, Naruth Corp. and Bank of Nova Scotia be made party defendants to this action; and that the caption of this action shall be amended accordingly;

2) That Plaintiff serve and file an amended complaint within 5 days after entry of this Order; and

3) That a copy of said amended complaint, together with a copy of summons and a copy of this Order be served upon the said Bernard Bloch, Joan Bloch, Rosalyn Bloch, Naruth Corp. and Bank of Nova Scotia within 10 days after entry of this Order.

(s) Antoine L. Joseph
Judge
Sitting by Special Designation

Dated this 5th day of August, 1976.

APPENDIX 5 — Excerpts From Judge Joseph's Memorandum Stating That The Petitioner-Defendants Be Joined In Order To Give Them An Opportunity To Be Heard.

Exhibit "O" — Page 5

of alimony even though rights of third parties may have been involved. But it is one thing to deal with securities, it is another thing to deal with real property on which they are outstanding mortgages when all parties are not before the court and the genuineness of the encumbrances is not settled. *This court is reluctant to disregard the title holders and mortgages without giving third parties an opportunity to be heard.* Also, in *Conan* the court found that the defendant wife had met her burden in establishing a resulting trust. This is not the case here.

The better approach to awarding alimony in gross arising from the present state of facts and which collaterally has received appellate approval is that adopted by the court in *Knowles* vs. *Knowles*. There the court after deciding that the wife had an equal share in the marital homestead, granted the husband an option to pay alimony in gross within a reasonable time failing which he was ordered to convey his interest in certain property to her.

It may be that all the transfers to Naruth are a sham. On the other hand they may be genuine, and I do not believe it wise to further postpone the resolution of the issues in this case.

Out of assets approximately over $300,000 in value I award plaintiff $100,000. I have considered all of the property defendant Bloch has amassed, his tendency to transfer property beyond the reach of his wife's advisers, the fact

that he has removed to another jurisdiction, and the wife's necessities, the physical condition of the parties and the wife's independence and ability to earn her own way.

Child support which defendant Bloch has already been ordered to pay, seems reasonable under all of the facts, and at the hearing, defendant agreed that $225.00 monthly support is not beyond his abilities.

Defendant is granted the option of deeding the property at 22 Golden Rock as well as Lot 243A Golden Rock to plaintiff in lieu of permanent alimony. An order to this effect will be signed upon presentation.

Exhibit "O" — Page 6

The Court of Appeals in a landmark decision, *Estien* vs. *Christian* has set forth certain criteria for the award of attorney's fees. The teaching of that case is that fees may be awarded only after there has been a stipulation, affidavit or hearing on the amount requested. Plaintiff's attorney must make known to the court what route he wants to utilize.

(s) Antoine L. Joseph
Judge, Sitting by Designation

DATED: May 19, 1975